Defined →

Inter-CO Trunks

ATTACHMENT A

All POTS

Performance Measurement	DDS Services Actual BLEC Service Performance (by Quarter)					
	DS0	DS1	DS3	Multiplexing	CLEC Trunking	~~Unbundled~~ Loops
INSTALLATION						
Number of Installations	— # of orders					
Average Interval (in days)	— BA allowed date					
% Install on time	— on due date					
SERVICE QUALITY	— Trouble Reports					
No. of Repairs						
Mean Time to Repair	Stop Clock vs. Total Duration					
No. of Failures	— Network Trouble					
Failure Frequency %	— Failures / lines					
% Availability	— Total % of time in service					

Differences?

– Each item, created a specific definition.

TCG MEASUREMENT REPORTS

Performance Measurement (a)	Actual ILEC Service Performance (by Quarter)				
	DSO (b)	DS1 (c)	DS3 (d)	CLEC TRUNKING (e)	POTS (f)
INSTALLATION					
g) Number of Installations					
h) Average Interval in days					
i) Percent Install on time					
SERVICE QUALITY					
j) Number of Repairs					
k) Mean Time to Repair					
l) Number of Failures					
m) Failure Frequency Percent					
n) * Percent Availability					

* BA would like to suggest changing the category to: "Percent Without Report Outstanding"

TCG MEASUREMENT REPORTS

COLUMN & ROW DEFINITIONS

COLUMN HEADINGS

a): Performance Measurements column defines the general description of each measurement.

b, c, & d): DSO, DS1 and DS3 Columns respectively are Private Line Special Access results.

** DS1 and DS3 are discrete measurements. DSO is all other services.

e): CLEC Trunks: This column represents service for CLEC trunks that carry traffic office to office.

f): POTS: This represents all services considered POTS which includes both unbundled elements and resale.

INSTALLATION CATEGORIES

g): Number of Installations: This is the total number of service orders issued/ requested by TCG and completed by Bell Atlantic. Regardless of the number of elements or circuits ordered, each service order counts as 1.

h): Average Interval in days: This is the sum of the receipt date to the service order due date as established on the firm order confirmation (FOC) for each service order where Bell Atlantic established the interval using the normal interval with this sum being divided by the total number of service orders used in the calculation.

TCG will send Bell Atlantic a service order request (PON) and Bell Atlantic will return the final order confirmation (FOC) which stipulates the scheduled completion date. The time from the PON date to the date due established on the FOC represents the average interval per order.

Bell Atlantic flags each order with an appointment flag of either "x" or "w". If the scheduled interval reflected on the order is established by Bell Atlantic using the normal interval process, the order will be flagged with the "x". However, if TCG should request a date that is further out than the normal interval, the order will be flagged with the "w" to indicate that the long interval was offered at the customers request.

For this category measurement, only those orders with the "x" indicator will be counted.

If for some reason the order needs to be redated (longer or shorter), the final FOC date is the date that will be used for measurement purposes.

i): Percent Install on time: This measurement is the total number of installations (service orders) that were completed on time (based on the service order established due date) divided by the total number of service orders. This is the percentage of orders completed on time.

SERVICE QUALITY CATEGORIES

j): Number of repairs: This is the total number of troubles received from TCG by service category. Each trouble counts as one and in cases where the trouble is redated or subsequent reports are received for escalations or to question status, Bell Atlantic will not count the subsequent reports. From receipt to close, each trouble counts as 1, regardless of the trouble resolution (CPE, NTF or BA Network).

k): Mean Time to Repair: This is the total measurable hours and minutes from all troubles (from the time Bell Atlantic receives a trouble from TCG until the service is restored and closed with TCG) divided by the total number of troubles for the report period.

For DSO, DS1, DS3 and CLEC Trunking, the measurements will be "Stop Clock" measurements where "no access" (customer access delayed) time is removed from the measurement.

For POTS, this will be a running 24 hour clock from trouble receipt to trouble clearance time. The Bell Atlantic clear time is the time service is restored. The Bell Atlantic work process is for the customer (TCG) to be notified as soon as the service is cleared. Bell Atlantic does not use the "close time" because after clearing the trouble, the technician may stay and complete another hour or so of clean up before actually closing the trouble.

l): Number of Failures: The number of failures is the total number of trouble reports (by category) where the trouble was closed out to a code indicating that the fault was a Bell Atlantic service problem.

Removed from the total trouble reports will be all troubles that reflect the cause of the trouble to be other than a Bell Atlantic Network fault. Examples would be troubles caused by Customer Provided Equipment (CPE), errors by the customers/end user in the use of the service or where no trouble was detected (F/OK and T/OK).

m): Failure Frequency Percent: This measurement is the total number of Network Troubles "l", divided by the total number of circuits that TCG has purchased from Bell Atlantic. The result expressed as a percentage.

n): Percent Availability: For this measurement Bell Atlantic is to do the following:

1. Multiply the total number of circuits by the total hours in the report period to establish the total hours of service availability possible for the report period.

2. Add all of the measurable time (hours and minutes) for only the Network Reports to establish the total non service availability hours for the report period.

3. Subtract the "non service availability" hours from the "total service availability" hours and divide the result by the "total service availability" hours and display this as a percentage.

Note #1: The above definitions were established on an informal call between TCG and Bell Atlantic on 9-20-96 in preparation for the meeting on 9-25-96. Additionally, we removed the "Multiplexing" column shown on the original request because we agreed that this was a sub-set of DSO, DS1 and DS3 and changed "Unbundled Loops" to "POTS"..

TCG MEASUREMENT REPORTS
"TCG SPECIFIC"

Performance Measurement (a)	Actual BAxx Service Performance (by Quarter)				
	DSO (b)	DS1 (c)	DS3 (d)	CLEC TRUNKING (e)	POTS (f)
INSTALLATION					
g) Number of Installations	1 1-1-97	2 1-1-97	3 1-1-97	4 4-1-97	5 TBD 7-1-97
h) Average Interval in days	6 1-1-97	7 1-1-97	8 1-1-97	9 4-1-97	10 TBD 7-1-97
i) Percent Install on time	11 1-1-97	12 1-1-97	13 1-1-97	14 4-1-97	15 TBD 7-1-97
SERVICE QUALITY					
j) Number of Repairs	16 1-1-97	17 1-1-97	18 1-1-97	19 4-1-97	20 1-1-97
k) Mean Time to Repair	21 1-1-97	22 1-1-97	23 1-1-97	24 4-1-97	25 1-1-97
l) Number of Failures	26 1-1-97	27 1-1-97	28 1-1-97	29 4-1-97	30 1-1-97
m) Failure Frequency Percent	31 1-1-97	32 1-1-97	33 1-1-97	34 4-1-97	35 TBD 7-1-97 OR TCG PROVIDES
n) Percent Without Report Outstanding	36 1-1-97	37 1-1-97	38 1-1-97	39 4-1-97	40 TBD 7-1-97 OR TCG PROVIDES

Data will start being collected, reports will be generated at end of quarter

TCG MEASUREMENT REPORTS

"BELL ATLANTIC SPECIFIC"

Performance Measurement (a)	Actual BAxx Service Performance (by Quarter)				
	DSO (b)	DS1 (c)	DS3 (d)	CLEC TRUNKING (e)	POTS (f)
INSTALLATION					
g) Number of Installations	[1] 1-1-97	[2] 1-1-97	[3] 1-1-97	[4] 4-1-97	[5] TBD 1-7-1-97
h) Average Interval in days	[6] 1-1-97	[7] 1-1-97	[8] 1-1-97	[9] 4-1-97	[10] TBD 1-7-1-97
i) Percent Install on time	[11] 1-1-97	[12] 1-1-97	[13] 1-1-97	[14] 4-1-97	[15] TBD 1-7-1-97
SERVICE QUALITY					
j) Number of Repairs	[16] 1-1-97	[17] 1-1-97	[18] 1-1-97	[19] 4-1-97	[20] 1-1-97
k) Mean Time to Repair	[21] 1-1-97	[22] 1-1-97	[23] 1-1-97	[24] 4-1-97	[25] 1-1-97
l) Number of Failures	[26] 1-1-97	[27] 1-1-97	[28] 1-1-97	[29] 4-1-97	[30] 1-1-97
m) Failure Frequency Percent	[31] 1-1-97	[32] 1-1-97	[33] 1-1-97	[34] 4-1-97	[35] 1-1-97
n) Percent Without Report Outstanding	[36] 1-1-97	[37] 1-1-97	[38] 1-1-97	[39] 4-1-97	[40] 1-1-97

TCG MEASUREMENT REPORTS

"TOP 3 CARRIER SPECIFIC"

Performance Measurement (a)	Actual BAxx Service Performance (by Quarter)				
	DSO (b)	DS1 (c)	DS3 (d)	CLEC TRUNKING (e)	POTS (f)
INSTALLATION					
g) Number of Installations	1 1-1-97	2 1-1-97	3 1-1-97	4 4-1-97	5 N/A
h) Average Interval in days	6 1-1-97	7 1-1-97	8 1-1-97	9 4-1-97	10 N/A
i) Percent Install on time	11 1-1-97	12 1-1-97	13 1-1-97	14 4-1-97	15 N/A
SERVICE QUALITY					
j) Number of Repairs	16 1-1-97	17 1-1-97	18 1-1-97	19 4-1-97	20 N/A
k) Mean Time to Repair	21 1-1-97	22 1-1-97	23 1-1-97	24 4-1-97	25 N/A
l) Number of Failures	26 1-1-97	27 1-1-97	28 1-1-97	29 4-1-97	30 N/A
m) Failure Frequency Percent	31 1-1-97	32 1-1-97	33 1-1-97	34 4-1-97	35 N/A
n) Percent Without Report Outstanding	36 1-1-97	37 1-1-97	38 1-1-97	39 4-1-97	40 N/A

Note: Results produced when a minimum of 3 carriers purchase measured service

TCG MEASUREMENT REPORTS

"TOP 10 LARGEST CUSTOMER SPECIFIC"

Performance Measurement (a)	Actual BAxx Service Performance (by Quarter)				
	DSO (b)	DS1 (c)	DS3 (d)	CLEC TRUNKING (e)	POTS (f)
INSTALLATION					
g) Number of Installations	1 TBD	2 TBD	3 TBD	4 TBD	5 TBD
h) Average Interval in days	6 TBD	7 TBD	8 TBD	9 TBD	10 TBD
i) Percent Install on time	11 TBD	12 TBD	13 TBD	14 TBD	15 TBD
SERVICE QUALITY					
j) Number of Repairs	16 TBD	17 TBD	18 TBD	19 TBD	20 TBD
k) Mean Time to Repair	21 TBD	22 TBD	23 TBD	24 TBD	25 TBD
l) Number of Failures	26 TBD	27 TBD	28 TBD	29 TBD	30 TBD
m) Failure Frequency Percent	31 TBD	32 TBD	33 TBD	34 TBD	35 TBD
n) Percent Without Report Outstanding	36 TBD	37 TBD	38 TBD	39 TBD	40 TBD

Item 5	Testimony submitted in Arizona by TCG Regional Vice President Jim Washington regarding performance standards

BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

IN THE MATTER OF THE PETITION OF TCG PHOENIX FOR ARBITRATION PURSUANT TO § 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996 TO ESTABLISH AN INTERCONNECTION AGREEMENT WITH US WEST COMMUNICATIONS, INC.	No. Docket No. U-3016-96-402 **DIRECT TESTIMONY OF JIM WASHINGTON ON BEHALF OF TCG PHOENIX**

INTRODUCTION

Q.1. Please state your name and business address.

A. My name is Jim Washington. My business address is 201 North Civic Drive, Suite 210, Walnut Creek, California 94596.

Q.2. By whom are you employed and what is your position there?

A. I am Regional Vice President for Teleport Communications Group Inc., responsible for the Western Region. In that position, I have operational responsibility for TCG Phoenix ("TCG"), the entity owned by Teleport Communications Group Inc. that operates in Arizona. My role involves responsibility for the continued development and

incumbent LEC allow collocating carriers to interconnect their network with other collocating carriers at the same LEC premise. This is not included in the TCG/Pacific Bell Agreement, but must be included in an arbitrated agreement.

Q.24. What is the next proposed modification?

A. The TCG/Pacific Bell Agreement provides for a monthly payment for interim number portability ("INP"). As stated in the agreement, the purpose of the payment was to approximate the switched access and reciprocal compensation that would have been paid if permanent number portability ("PNP") had been in effect. The FCC has recently issued (on July 2) a Number Portability Order that modifies the INP rules, first by requiring the incumbent LECs to provide INP for free until PNP is available, and second by providing for the sharing of switch access revenues.

Q.25. What is the next proposed modification?

A. The First Report, at ¶ 932, establishes a default discount range to be used for arbitrated agreements in the absence of avoided cost studies. The default range is 17% -25%.

Q.26. Does the TCG/Pacific Bell Agreement include specific performance standards and remedies?

A. No. At the time of the agreement, TCG and Pacific Bell agreed to defer the specific arrangements for performance standards to

a later time. While the parties continue to negotiate, the exact terms have not been reached. However, such terms are essential to an arbitrated agreement.

Q.27. Are there specific issues which should be addressed in these provisions?

A. Yes. Among those categories are:

a. Installation Performance Measures for unbundled loops, switched interconnection trunks, private line/ special access DS3s, DS1s and DSOs, and Multiplexers.

b. Quality of Service Performance Measures for the same elements.

c. Measurement of the grade of service provided.

d. Timeliness of NXX code openings.

e. Implementation of 911 data bases and availability of 911 trunks.

f. Timeliness and Accuracy of all data bases.

g. Access to poles, conduits and rights-of-way.

Q.28. Why are these requirements important elements of an interconnection agreement between TCG and U S West?

A. The implementation of an interconnection agreement is a long and complicated process. There are extensive obligations on the part of both TCG and U S West, involving deployment of facilities,

provision of information and payment of revenues. There are also a number of circumstances under the agreement where one party's ability to provide service will depend on the performance of the other party. In these circumstances, disputes are likely to arise about the performance of one or the other party under the agreement.

In the absence of established performance standards and remedies, the parties would be forced to engage in extensive, time-consuming and costly litigation every time a dispute arose about performance. This would be a burdensome problem, forcing the parties to waste valuable resources on litigation when they are trying to provide competitive telecommunications services. Instead, the interconnection agreement should include firm expectations and responsibilities at the time it is signed, with established remedies for failures to meet those expectations and responsibilities.

Q.29. The TCG proposal recommends that the cost for access to poles and conduits be based on the formula set forth in 47 U.S.C. § 224. Do you have a specific recommendation for the price of conduit access?

A. Yes. TCG proposes that the rate be no higher than $.60 per foot.

Item 6	Testimony submitted in Arizona for TCG by Page Montgomery regarding performance standards

BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

IN THE MATTER OF THE PETITION OF TCG PHOENIX FOR ARBITRATION PURSUANT TO § 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996 TO ESTABLISH AN INTERCONNECTION AGREEMENT WITH US WEST COMMUNICATIONS, INC.	No. Docket No. U-3016-96-402 **TESTIMONY OF WILLIAM PAGE MONTGOMERY ON BEHALF OF TCG PHOENIX**

1. INTRODUCTION

Q. Mr. Montgomery, can you summarize your business affiliation, background and qualifications?

A. Yes. My name is William Page Montgomery. I am the principal of Montgomery Consulting in Chestnut Hill, Massachusetts. I have been involved in telecommunications public policy and regulatory matters since 1974. I have provided consulting services regarding most major common carrier matters before the Federal Communications Commission ("FCC"). I was active in developing and analyzing several parts of the access charge rules that went into effect after the AT&T divestiture and I have been involved in most FCC matters relating to major changes in the access charge rules and tariffs. I also have

not only an interstate tariff issue because of U S West's intrastate RIC.

Under the Act, the arbitrator must rule upon § 251 issues by November 1996. This switched access interconnection issue falls into that category. TCG is seeking an agreement with U S West to ensure that the rates, terms and conditions of such services are fair and appropriate. The request thus falls squarely within the mandate of the Act.

7. TCG'S OFFER FOR PERFORMANCE STANDARDS AND PENALTIES IS BOTH COMMERCIALLY REASONABLE AND IN ACCORD WITH THE TELECOMMUNICATIONS ACT

Q. Is the creation of a meaningful set of performance standards and penalties for the relationship between U S West and TCG also part of the policy favoring facilities-based competition?

A. Yes. Such standards and penalties are normal practices in commercial agreements and the arbitrator should apply those types of conditions in evaluating TCG's and U S West's respective positions. The issue of incorporating appropriate performance standards and penalties into a TCG interconnection agreement with U S West is very important to TCG. TCG requests that the arbitrator require U S West to agree to a simplified set of performance standards and penalties. TCG's offer illustrates the components that must be part of such a process, namely (1) establishing the principle; (2) establishing

external references (benchmarks); (3) determining a limited number of critical service performance metrics; (4) determining discrete network components or facilities subject to those metrics; (5) outlining pre-specified penalties; and (6) enforcement.

Q. Can you summarize the offer that TCG is making?

A. Yes:

Benchmarks. TCG offers to U S West that their interconnection agreement incorporate a reciprocal performance and standards clause for installation, maintenance and quality of service that equals or exceeds one of two benchmark performance standards. The first benchmark is service provided by either carrier to any geographically adjacent local exchange carrier. The second benchmark is the service performance level provided to the top 10% of U S West's customers, based upon billing volumes.

Service quality parameters. Each carrier will provide quarterly reports to the other that detail (a) installation intervals; (b) failure frequency; (c) percentage of availability; and (d) mean time to repair (MTTR). Each of these measures will be reported for any of six (6) network components that either carrier uses, and which can be benchmarked against one of the two measures identified above.

Specified network elements. The six network elements are DS0, DS1 and DS3 facilities, multiplexing, trunking and unbundled loops. Both TCG and U S West would be able to substitute or add to this list of network components.

Service quality scorecard. Each cell in the matrix created by these four performance measures applied to the six types of components, will be given a grade of +1 if the benchmark is equaled or exceeded, and -1 if it is not.

Physical collocation intervals. There will also be a -1 score recorded for each 30 day incremental delay after the first 30 day delay in a standard interval of 90 days for completing installation of physical collocations in U S West's offices. For example, a realized physical collocation interval of 120 to 150 days (120 days being the 90 day standard interval plus the 30 day grace period) shall receive a score of -1; an interval of 151 to 180 days, a score of -2, and so on.

Percentage billing penalties. If the average of these grades is less than 1.0, either carrier will provide the other with a percentage offset to each bill or settlement statement provided during the next quarter. The percentage penalty so applied shall increase if the substandard average grade persists for more than one quarter. In the first substandard quarter, no percentage penalty shall be applied. If the deficiency carries into a second consecutive quarter, the percentage penalty shall be 10%. A third consecutive substandard quarter shall generate a percentage penalty of 25%; a fourth consecutive quarter, 45%; a fifth consecutive quarter, 70%; and if the substandard grade persists beyond five consecutive quarters, 100% of the following quarter's bill shall be deemed the penalty charge.

Problem resolution. For any such substandard (i.e., -1) score, the carrier with the inferior performance will provide the other carrier written documentation explaining why the failure occurred and what steps the deficient carrier will undertake to prevent recurrence of such a failure.

Commission resolution. Should the Commission determine after a formal complaint proceeding that one carrier provided materially incorrect data for the benchmark service performance measurements, or blocked calls from the competitor's customers while its own customers could send and receive traffic to each other, the offending carrier would be liable for $1,000,000 in liquidated damages to the other carrier. These liquidated damages will eliminate the need for the Commission to review the carrier's complex and proprietary information in order to assess damages.

Q. TCG's position is based upon the use of benchmarks of the service quality provided to other LECs or to large customers, as you mentioned. Is this concept supported by the 1996 Act?

A. Yes. Section 251(c) of the Act binds the incumbent LECs like U S West to act in a completely "nondiscriminatory" manner. This term differs from the standard in the law prior to 1996, which prohibited only "unreasonable" discrimination.[48/] Traditionally, the "nondiscrimination" provisions applicable to monopoly telephone companies referred to discrimination among its subscribers or customer classes. Now, the nondiscrimination principle must apply among all competing state-certified carriers. A mere nondiscrimination obligation for U S West as among TCG and other CLECs (with respect to the quality of U S West's services or any other interconnection items) would not prevent U S West from favoring itself or its affiliates in some way. Nondiscrimination must apply to incumbents and entrants alike in order to fulfill the basic purpose of the Act. In other words, every practice or condition that U S West undertakes that affects a local competitive entrant must be able to withstand a test of whether that condition results in a preference to U S West's internal practices or its relationships with affiliates. The *Section 251/252 Implementation Order* reached precisely this same conclusion regarding the meaning of

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48/ See, e.g., 47 U.S.C. § 205.

"nondiscrimination."[49/] This broader nondiscrimination test means that arrangements between TCG and U S West must define practical service quality benchmarks of the type in TCG's proposal.

Q. Does the *Section 251/252 Implementation Order* support TCG's proposal for performance standards and penalties?

A. Yes, it does, although the FCC leaves state regulators with substantial latitude concerning how to implement specific provisions. The FCC's order allows the state arbitrator to approve TCG's offer concerning performance standards and penalties.[50/] In its implementation notice, the FCC also explicitly recognized the importance of performance standards governing installation, maintenance, and repair of the incumbent LEC's portion of the interconnection facilities, and it noted the type of remedy that would make ILECs subject to liquidated damages for failure to meet agreed on performance standards.[51/] TCG's offer represents a very good initial mechanism for this purpose and should be adopted by the arbitrator.

[49/] ¶¶ 859-862.

[50/] Id. ¶¶ 310 and 311. § 51.305 (a) (3), (4) and (5) of the FCC rules also broadly codify each incumbent LEC's obligation to maintain service quality for interconnection at least as good as the ILEC's internal standards.

[51/] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-98, ¶ 61, April 19, 1996 (citing "Implementing the Telecommunications Act of 1996: Encouraging Local Exchange Competition," a paper by TCG, Apr. 4, 1996), 79 and 89.

The FCC's order also contains numerous references to the unequal bargaining power between incumbent LECs like U S West and firms like TCG as well as repeated observations that ILECs lack incentives to treat firms like TCG in a fair and nondiscriminatory manner. All of these FCC findings are consistent with TCG's offer regarding explicit performance standards.

Q. Is there anything unusual about TCG's desire to have contractual agreements of this type?

A. No. TCG's offers in this respect are entirely consistent with standard practices in the telecommunications industry and other industries. Prior to local competitive entry, large IXC customers often indicated their more specific performance expectations to the monopoly ILEC vendor, but these do not usually take the form of a contractual obligation. Detailed quality management conditions are inevitable and essential in a competitive marketplace. In a market with more than one supplier, performance standards must become the operational basis for service differentiation because new suppliers will willingly supply and warrant quality levels in excess of those offered by the incumbent.

Because TCG and other CLECs must still use some of the monopoly elements of the ILECs, its service quality is only as good as the service quality provided by the ILECs with whom they are

interconnected. The weakest link in the chain measures the strength of the entire chain. If the weak link is an ILEC network element, TCG cannot meet its own contractual service quality goals for its customer.

Q. Is TCG's concern regarding this issue largely hypothetical?

A. Absolutely not. I understand that TCG has experienced repeated service quality problems with several incumbent LECs and therefore requests that any arbitration adopt the minimum standard and penalties set forth above. Various incumbent LECs have failed to turn up circuits ordered by TCG; have failed to meet Service Availability standards or MTTR standards that were previously agreed to, and have failed to provide CLECs access to poles on the schedule called for in their own guidelines; and have failed to assign NXXs in a timely manner.[52/]

Any interconnection arrangement approved in arbitration should therefore include performance standards. The agreements should provide that if either party fails to meet a particular standard, no matter the reason, a specified penalty will take effect. The longer

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[52/] See, e.g., Request of Teleport Communications Group, Inc. For a Proceeding to Investigate the Provision of Interconnection Service by New York Telephone Company, New York Public Service Commission, October 17, 1995; In re NYNEX Refusal to Provide Central Office Code Assignments, TCG's Emergency Petition for Declaratory Ruling, Federal Communications Commission, October 16, 1995; In re Southwestern Bell Telephone Co. Refusal to Provide Central Office Code Assignments, TCG's Emergency Petition For Declaratory Ruling, Federal Communications Group, August 17, 1995.

the failure lasts, the greater the cumulative penalty should be. Exceptions should be allowed only for *force majeure*, i.e., events clearly outside the control of either carrier.

Q. Would the absence of explicit performance standards harm TCG in any other way?

A. Yes. Confronted with the effectively uninsurable risk that U S West's performance problems would degrade the service quality to TCG's customers, TCG might place restrictions in its contracts or tariffs to preclude or limit claims lodged by its customers. Traditionally, telephone company tariffs have included stringent limitations on the company's liability for damages. A monopoly customer's remedy has been limited to the charges it paid to the telephone company.

However, larger users of the telephone network have complained for many years that the liability limitations in monopoly telephone company tariffs were unreasonable, and did not reflect the types of service arrangements the users had with other vendors. Significant interruptions in telephone service can cause significant damages for business of all sizes, ranging from the pizza shop that cannot receive orders to a stock brokerage firm for which an interruption could cost millions of dollars. One of the major reasons why competitors such as TCG first emerged is that financial services

firms risk literally hundreds of millions of dollars if their telephone service is interrupted, and these firms wanted competitive alternatives in order to reduce these risks. (Merrill Lynch was a major initial underwriter of TCG).

Major customers of either TCG, U S West or another service provider will have the bargaining leverage to insist that the traditional tariff limits on liability not be placed in their service agreements. Given the increasing importance of telecommunications in many industry sectors, potential customers are certain to insist on service performance provisions of their own. If TCG attempted to maintain the monopoly-era liability limitations in all of its tariffs and contracts it would face an untenable dilemma: It could either refuse potential customers' requests for their own service performance guarantees – and undoubtedly lose that user's business – or accede to a customer's request for such a contract and expose itself to added risks based upon U S West's performance problems.

Q. Is this an area where the new options in the Act for private contractual agreements, either negotiated or arbitrated, represent important new policy options?

A. Yes. In the past, state regulators have tried to force ILECs to provide a higher level of retail service quality using rather clumsy regulatory tools at their disposal: investigation, allegation,